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Illegal wildlife trade: the critical role of the banking sector in combating money laundering

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Abstract

Purpose – Illegal wildlife trade (IWT) is a transnational organized crime that generates billions in criminal proceeds each year. Yet, it is not regarded by many countries as a serious crime. There is also no general consensus on its recognition as a predicate offence for money laundering. In this regard, banks are misused in different ways to facilitate financial flows linked to IWT. This paper aims to illustrate the importance of the banking sector in combating money laundering relating to IWT. It also aims to demonstrate the need for a general recognition of IWT as a predicate offence for money laundering.

Design/methodology/approach – This study investigates the implementation of money laundering controls by banks in the illegal-wildlife-trade context. As background to this investigation, it provides an overview of IWT, which is followed by an exploration of some of the general characteristics of the banking sector, before discussing the relevant Financial Action Task Force (FATF) recommendations.

Findings – This study finds that the banking sector is well-placed to combat money laundering relating to the IWT and is, by virtue of its international nature and strong focus on compliance, able to be effective in preventing the use of the proceeds of IWT as well as in identifying broader trafficking networks. Moreover, the banking sector is well-equipped to develop appropriate platforms to facilitate the swift, easy and effective sharing of financial intelligence between banks at the local, regional and especially international level.

Research limitations/implications – This study draws on publicly available information on financial flows relating to IWT. Little data and research are available on the financial flows and consequently the money laundering techniques used in cases suspected of IWT.

Originality/value – There has been little scholarly research on the relationship between money laundering and the IWT as well as the financial flows of IWT in general. This study highlights some of the money laundering techniques used in relation to IWT by drawing on the works of various international organizations, including the FATF.

Keywords Illegal wildlife trade, Money laundering, Money laundering controls, Financial flows, FATF

Paper type Research paper

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1. Introduction

The illegal wildlife trade (IWT) has recently been the subject of increasing discourse by international bodies and national authorities. The term "IWT" broadly refers to the sale of protected wildlife, including both animals and plants, or derivatives thereof, that is in violation of international or domestic law (Wyler and Sheikh, 2008, p. 3). IWT is a transnational organized crime that generates billions in criminal proceeds each year (OECD, 2019, p. 11; Avis, 2017, p. 2). IWT therefore poses significant consequences for the global financial system. But its impact is not limited to economic risks. IWT also threatens biodiversity, enables corruption and increases public health risks (Sullivan and Weerd, 2021, p. 6). This widespread impact is indicative of the seriousness of IWT. A key aspect of IWT operations is to launder the criminal proceeds with a view to obscure the source, movement and ownership of the proceeds and ultimately use it in the legitimate financial system. Money laundering in this context can take various forms and be facilitated through abuse of the products and services of a broad range of entities, including banking institutions. The use of banks by criminal syndicates in facilitating money laundering is particularly evident in relation to high-level role players in the IWT supply chain (SAMLIT, 2021, p. 11).

Banks have been identified by the Financial Action Task Force (FATF) as entities that must comply with money laundering measures and procedures. The FATF is an independent inter-governmental body that has taken the lead in developing a coordinated international response to combat threats to the integrity of the international financial system (Ellinger *et al.*, 2011, p. 94). The legal basis for compliance with FATF standards arises from member states' adoption of the standards in domestic regulatory enforcement frameworks. In 2020, the FATF published its first global report on IWT. In the report, it emphasized the importance of conducting financial investigations in cases suspected of money laundering relating to IWT (FATF, 2020, p. 27). Such investigations are essential in preventing the use of proceeds connected to IWT as well as in identifying and disrupting broader trafficking operations. These financial investigations, moreover, are enabled by the implementation of the FATF's *International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation* (recommendations) (FATF, 2020, p. 51). The recommendations consist of a wide range of money laundering controls, including customer due diligence measures, record-keeping requirements, reporting requirements relating to suspicious activities and beneficial ownership measures.

This article investigates the implementation of money laundering controls by banks in the IWT context. As necessary background to the investigation, an overview of IWT is provided, followed by an exploration of some of the general characteristics of the banking sector, before discussing the relevant FATF recommendations.

The primary purpose of this article is to illustrate the importance of the banking sector in combating money laundering relating to IWT. A secondary purpose is to demonstrate the need for a general recognition of IWT as a predicate offence for money laundering. In this regard, countries have generally been slow in amending national laws to reflect IWT as a predicate offence for money laundering, despite the call by the United Nations (UN) and the FATF's position on the matter (UN Resolution, 2021, p. 6; FATF, 2012/2023, p. 123).

2. Overview of illegal wildlife trade

2.1 Regulatory aspects

Wildlife trade is not a recent phenomenon. Humans have always relied on wildlife for sustenance and survival. The provision of, and consequent trade in, basic goods relating to food, water and shelter is inextricably linked to wildlife. As the demand for wildlife

increased over time, however, pressure mounted on the survival of many species. This necessitated the need to regulate the wildlife trade.

The *Convention on the International Trade in Endangered Species of Wild Fauna and Flora* (CITES) is an important international instrument regulating wildlife trade, which entered into force on 1 July 1975. CITES is an international governmental agreement currently consisting of 184 member states. CITES aims to ensure that international trade in wildlife does not threaten the survival of species. Central to achieving this aim are the appendices of CITES (CITES official website, 2023). Appendix 1 in the supplementary material lists species that are currently threatened with extinction and CITES prohibits international trade in these species. In exceptional cases, however, trade in Appendix 1 species may occur provided it is authorized by the granting of both an import permit and an export permit. Wildlife currently listed in Appendix 1 includes certain species of rhinoceros, pangolins and red pandas. Appendix 2 in the supplementary material lists species that are not necessarily threatened with extinction but may become so without trade-related intervention. International trade in Appendix 2 species may be authorized by the granting of an export permit or a reexport certificate. No import permit is required for Appendix 2 species under CITES. Wildlife currently listed in Appendix 2 includes certain species of elephants, hippopotamuses and giraffes. Appendix 3 in the supplementary material, finally, is a list of species included at the request of a member state that already regulates trade in the species but requires the cooperation of other countries to prevent unsustainable or illegal exploitation. International trade in species listed in this appendix is permitted only on presentation of the appropriate permits or certificates. Wildlife currently listed in Appendix 3 includes hyenas, mongooses and snapping turtles.

To give effect to the appendices and other CITES actions, countries around the world have implemented legislation and regulation to control the exploitation of and trade in endangered species. Law enforcement in turn plays an important role in ensuring compliance with such laws and regulations. This role includes, but is not limited to, the control of illegal imports and exports of wildlife and products derived therefrom. Against this background it is clear that wildlife trade may be legal or illegal. It will be legal where there is compliance with the applicable international laws (such as CITES appendices) or national laws regulating trade in wildlife. It will be illegal where the relevant laws are not complied with.

The works of international organizations further play an important role in combating wildlife crime (Bergenas, 2018, p. 257). The UN in particular has been vocal about tackling IWT. In a 2021 resolution on tackling illicit trafficking in wildlife, the UN urges member states to take decisive steps at the national level to prevent, combat and eradicate illegal trade from the supply, transit and demand sides (UN Resolution, 2021, p. 6). This should be achieved, according to the UN, "by strengthening legislation and regulations necessary for the prevention, investigation, prosecution and appropriate punishment of such illegal trade, as well as by strengthening enforcement and criminal justice responses, and to increase the exchange of information and knowledge among national authorities as well as among Member States and international crime authorities" (UN Resolution, 2021, p. 6). It also calls upon member states to make illicit trafficking in protected wildlife "a serious crime" (UN Resolution, 2021, p. 6).

2.2 Practice of and financial flows associated with illegal wildlife trade

The practice of IWT may be explained with reference to its classification as a transnational organized crime. IWT is a complex system and practices in this regard may vary depending on factors such as the geographical focus of the IWT syndicate and the targeted wildlife. All

IWT operations, however, generally follow three basic stages: collection, transportation and distribution (Nanima, 2016, p. 225). The collection stage is characterized by the extraction of wildlife or derivatives thereof. Various role players, typically referred to as "poachers" or "traffickers," may be involved at this stage and are chosen based on their unique knowledge, language skills and hunting expertise (FATF, 2020, p. 15). Corruption at this stage may take the form of compromised game rangers who alert poachers to the whereabouts of targeted wildlife or turn a blind eye to poaching in exchange for appropriate compensation. The country in which the extraction occurs is referred to as the "source country" (Wyatt, 2013, p. 20). The transportation stage entails the transportation of the wildlife or derivatives thereof from the extraction site to either national exporters or international receivers (Nanima, 2019, p. 3). Transportation arrangements may include local intermediaries and may span multiple jurisdictions to avoid detection and obfuscate the final destination of the wildlife or derivative products. Such arrangements present opportunities for corruption. For example, because game rangers and law enforcement officials may be allowed access into game reserves without being subjected to (adequate) inspection, compromised rangers or officials may, in exchange for appropriate compensation, use official vehicles to transport illegally harvested wildlife out of game reserves (SAMLIT, 2021, p. 13). Similarly, customs officials may be willing to overlook a consignment of illegal wildlife or even arrange for the issuance of CITES permits in instances where such permits would ordinarily not be granted, if they are appropriately compensated. Moreover, criminals involved in IWT have been known, through bribery and corruption of officials, to switch transport documents such as bills of lading or divert shipments containing trafficked wildlife to obscure the source country (FATF, 2020, p. 16).

If everything goes according to plan, the wildlife or derivative products eventually end up in the possession of the syndicate leader, who is typically in a different country. The syndicate leader facilitates the third stage, namely, the distribution of the wildlife or derivative products. The syndicate leader may or may not also be responsible for having the wildlife or derivative products processed (Nanima, 2016, p. 225). The IWT operation concludes with the wildlife or derivative products being sold to the end user, which typically involves "catering and jewellery sectors, as well as food markets, farms, circuses, and pet stores, to name a few" (SAMLIT, 2021, p. 14). Such industries are referred to as the "destination" market (Wyatt, 2013, p. 17).

Underlying the different stages in the IWT operation are financial flows linking the different role players. Payment in and financing of IWT operations may vary from operation to operation, but some common principles are apparent from the research in point. Three principles are particularly important to this article and can be summarized as follows: First, low-level role players such as poachers and compromised wildlife reserve officials are primarily compensated in cash (SAMLIT, 2021, p. 2), whereas high-level role players such as domestic exporters may receive compensation by way of electronic money transfers (FINTRAC, 2022, p. 7). In the case of both low- and high-level role players, payments are also sometimes made for ancillary expenses, including vehicle hire and domestic accommodation. Such compensation and payments are typically arranged by syndicate leaders themselves and are frequently made in round amounts (FATF, 2020, p. 15; SAMLIT, 2021, p. 31).

Second, front companies, particularly those that have connections to import–export industries, are increasingly used in facilitating financial flows relating to IWT. A front company can be described as a properly registered company with the characteristics of a legitimate business, serving to conceal and obscure illicit financial activity. It is not uncommon for multiple front companies, situated in either or both the source and

destination countries, to be used in IWT operations. As front companies conduct legitimate business simultaneously to illegal activity, moreover, they are intended "to both facilitate the movement of the wildlife itself and to co-mingle licit and illicit proceeds, thereby disguising the transfer of value" (FATF, 2020, p. 17). Front companies are typically used in connection with shell companies. A shell company can be described as an entity that does not have a physical presence in any jurisdiction. They are typically used to transfer funds between syndicate members in the IWT operation.

Finally, IWT syndicates misuse the products and services of multiple industries, including the formal financial sector and the real estate and retail industries. Regarding the financial sector, cash deposits, e-banking platforms and third-party wire transfers represent the most prevalent products and services used to move funds relating to IWT. To avoid identification of the sender and receiver of funds, money mule accounts (i.e. accounts of innocent individuals who are not involved in the IWT operation) and below-threshold payments may be used in this regard (FATF, 2020, p. 17). As regards the real estate and retail industries, syndicates have been known to purchase real estate and luxury items such as motor vehicles with criminal proceeds. This adds another layer to the financial flows, which may serve to further obscure the origin of the funds.

In general terms, money laundering can be defined as the process of concealing or disguising the illicit origin, disposition or movement of funds so that the funds appear to have originated from legitimate sources (Chitimira and Munedzi, 2022, p. 54). The use of cash, front and shell companies as well as the misuse of the products and services of various industries as discussed above represent important methods by which criminal syndicates attempt to circumvent money laundering laws or launder proceeds generated from IWT. The use of front and shell companies in particular has emerged as a prevalent money laundering practice in many different contexts, which may be associated with any stage in the money laundering process, namely, the placement, layering or integration stage (Schudelaro, 2003, pp. 55–58). A common money laundering technique relating to front companies is to generate several fictitious receipts originating from the front company (Chen and Anderson, 2020). The value of these receipts would be higher than the receipts of the legitimate business conducted. Thus, the criminal funds are justified in this manner. When front companies are used in combination with other money laundering practices, it is therefore particularly difficult to detect and consequently prevent illicit financial flows linked to IWT. This emphasizes the importance of the implementation of money laundering controls by banks and other obligated entities.

3. General characteristics of the banking sector

3.1 Introductory remarks

Given the specific focus of this article, it is necessary to explore some of the general characteristics of the (commercial) banking sector. This provides insight into the reasons for which banks are specifically used in the facilitation of money laundering relating to IWT. It also informs the analysis and recommendations that follow the investigation of the implementation of money laundering controls by banks in this article.

3.2 Wide variety of banking activities

Over the past few decades, banks in general have developed into multifunctional institutions engaged in a wide variety of business activities (Ellinger *et al.*, 2011, p. 80). Beyond their traditional roles of deposit-taking and lending, banks nowadays also engage in activities as varied as investment management, insurance, securities and derivatives trading, estate agency and pensions. Modern banks are accordingly versatile in their product and service

offerings. This has led them to dominate financial markets and to enjoy strong participation in the financial system. Consequently, the banking sector plays a vital part in the functioning of national economies and the global financial system (Schulze, 2016, p. 1).

3.3 International nature of banking

In the facilitation of banking activities, correspondent banking facilities are widely used. "Correspondent banking" can be described as the provision of banking services by one bank to another. These banks are typically situated in different countries. Several banking services may be provided through correspondent banking, including cash management (e.g. interest-bearing accounts in a variety of currencies), international wire transfers, cheque clearing, payable-through accounts and foreign exchange services (FATF, 2016, p. 7). Correspondent banking relationships take effect through the Society for Worldwide Interbank Financial Telecommunications (SWIFT). In this regard, the so-called SWIFT test keys or a SWIFT risk management application are exchanged to transmit information and data, such as payment instructions, between banks (Byrne and Berger, 2017, pp. 110–112). Correspondent banking relationships are a common feature of modern-day banking. These relationships illustrate the strong international network of the banking sector.

Importantly, international correspondent banks require satisfaction that their dealings with other banks will not expose them to regulatory or other concerns in their own jurisdictions (Spruyt, 2020, p. 11). This is especially true in relation to money laundering and terrorist financing risks. Hence, international correspondent banks may hesitate to consider correspondent relationships with banks in high-risk countries or countries with insufficient anti-money laundering laws and regulations. Moreover, existing correspondent relationships may fall prey to the phenomenon of de-risking, which refers to the termination of, or restrictions in, business relationships with clients or categories of clients to avoid, rather than manage, risk (World Bank Group, 2018, p. 1).

3.4 Extensive regulation

The banking sector is extensively regulated. Regulation provides for rules and requirements relating to various aspects that banks are required to implement and adhere to. These rules and requirements are usually enforced by national authorities. Noncompliance with such rules and requirements may result in the imposition of substantial monetary fines, forfeitures, reputational damage and, in extreme cases, the suspension or termination of banking licenses, to name a few (Lupton, 2022, pp. 197–202). Ultimately, banking regulation is aimed at protecting the interests of consumers, ensuring the stability of the financial system and averting financial crime.

Extensive regulatory oversight has over the years given rise to a culture of compliance within the banking community. Indeed, regulatory compliance is high on the agenda of banks. This is especially true in the area of financial crime where banks are routinely assessed by national authorities on their implementation of financial-crime control mechanisms and measures. In South Africa, for example, the Reserve Bank, whose prudential authority includes oversight of the banking sector, conducts regular assessments of money laundering, terrorist financing and proliferation financing risk in the South African banking sector to develop a collective view of these risks to establish appropriate supervisory activities (South African Reserve Bank, 2022, p. 8). To ensure compliance with regulatory obligations and expectations, moreover, banks have adopted various practices, two of which are noteworthy here. The first is that banks have dedicated professionals responsible for ensuring compliance with money laundering controls and other concomitant obligations (Byrne and Berger, 2017, p. 76). Such professionals must be equipped with the

necessary resources to carry out their responsibilities. Especially important are resources relating to customer due diligence investigations, suspicious activity reporting, beneficial ownership procedures and sanctions screening.

Central to the effective implementation of money laundering controls and compliance obligations, second, are compliance programs (Byrne and Berger, 2017, p. 76; Hugo and Spruyt, 2018, p. 248). Such programs are important in the mitigation of money laundering and terrorist financing risks as they provide for processes, systems and controls that address financial crime risk. They should be updated frequently to keep abreast with the latest developments in the financial crime environment. To ensure sufficient compliance with these programs, it is recommended that banks provide ongoing training and support to compliance professionals and other relevant personnel (Byrne and Berger, 2017, p. 81).

4. Financial Action Task Force recommendations

4.1 Introductory remarks

The FATF recommendations contain a comprehensive framework of measures for jurisdictions to implement to combat money laundering, terrorism financing and nuclear weapons proliferation. They are internationally endorsed as the global standard against money laundering and terrorist financing. A detailed discussion of all the recommendations falls outside the scope of this article. Only those recommendations that inform the money laundering controls are considered below.

4.2 Assessing risk and a risk-based approach

In terms of recommendation 1, member states must require financial institutions such as banks and designated non-financial businesses and professions under their jurisdiction to investigate, detect and take effective action to mitigate money laundering, terrorist financing and proliferation financing risks. In doing so, a risk-based approach must be adopted to ensure that measures to prevent or mitigate money laundering, terrorist financing and proliferation financing are commensurate with the risks identified. According to the FATF, "this approach should be an essential foundation to efficient allocation of resources across the anti-money laundering and countering the financing of terrorism (AML/CFT) regime and the implementation of risk-based measures throughout the FATF Recommendations. Where countries identify higher risks, they should ensure that their AML/CFT regime adequately addresses such risks. Where countries identify lower risks, they may decide to allow simplified measures for some of the FATF Recommendations under certain conditions" (FATF, 2012/2023, p. 10).

4.3 Money laundering and terrorist financing offences

Recommendation 3 requires member states to criminalize money laundering on the basis of the Vienna Convention and the Palermo Convention. The FATF states that "countries should apply the crime of money laundering to all serious offences, with a view to including the widest range of predicate offences" (FATF, 2012/2023, p. 12). It is worth reiterating that the FATF designates the trafficking of protected species of wild fauna and flora as a predicate offence for money laundering. Recommendation 4 requires the adoption of measures akin to those stipulated in the Vienna Convention, the Palermo Convention and the Terrorist Financing Convention, "including legislative measures, to enable their competent authorities to freeze or seize and confiscate the following, without prejudicing the rights of bona fide third parties:

- property laundered;
- proceeds from, or instrumentalities used in or intended for use in money laundering or predicate offences;
- property that is the proceeds of, or used in, or intended or allocated for use in, the financing of terrorism, terrorist acts or terrorist organisations, or
- property of corresponding value" (FATF, 2012/2023, p. 12).

Recommendation 5 requires the criminalization of terrorist financing on the basis of the UN Terrorist Financing Convention. Such criminalization must extend beyond the financing of terrorist acts to also include the financing of terrorist organizations and individual terrorists even in the absence of a link to a specific terrorist act or acts. Such offences should also be designated as money laundering predicate offences.

4.4 Targeted financial sanctions

Recommendations 6 and 7 require of countries to implement targeted financial sanctions regimes to comply with UN Security Council resolutions relating to the prevention and suppression of terrorism and terrorist financing, and the prevention, suppression and disruption of proliferation of weapons of mass destruction and its financing. The term "targeted financial sanctions" refers to "both asset freezing and prohibitions to prevent funds or other assets from being made available, directly or indirectly, for the benefit of designated persons and entities" (FATF, 2012/2023, p. 133). Persons and entities may be designated by international authorities such as the UN Security Council under Chapter VII of the Charter of the UN, and by national authorities such as financial intelligence units (FIUs) in terms of domestic regulatory frameworks. Domestically, designations are listed on publicly available sanctions lists.

4.5 Customer due diligence, record-keeping requirements, reporting requirements relating to suspicious activity and beneficial ownership measures

Customer due diligence is the foundation of anti-money laundering best practice. It is underpinned by the "Know Your Customer" principle, which requires of banks and other financial institutions to know and understand their customers and the business of their customers (Marxen, 2018, p. 172; Hugo and Spruyt, 2018, p. 235). Under the FATF recommendations (particularly recommendations 10, 12–16), three types of customer due diligence measures can be discerned, namely, simplified, enhanced and ongoing due diligence measures. The question as to which type of due diligence measures must be applied in a particular instance is determined with reference to the level of money laundering risk a customer or transaction poses to the financial institution. Simplified customer due diligence measures are generally applied in instances where there is a low risk of money laundering or terrorist financing activities. Simplified customer due diligence measures require of banks and other financial institutions to obtain basic identification and verification information from customers. With this information, the bank must establish a customer risk profile and consequently determine the level of risk posed by the client or specific transaction and implement customer due diligence measures commensurate to the risk (Symington *et al.*, 2022, p. 224).

Enhanced due diligence measures are additional measures implemented to identify and prevent illicit activities by financial customers that pose a higher risk of money laundering and/or terrorist financing. Enhanced due diligence measures usually involve detailed background checks on customers and typically require of banks to obtain comprehensive

information about their customers to prevent the bank from being used to facilitate money laundering and terrorist financing. The FATF requires enhanced due diligence measures to be applied in cases involving high-risk customers. High-risk customers include politically exposed persons and persons who engage in cross-border correspondent banking, money or value transfer services, new technologies and wire transfers (FATF, 2012/2023, pp. 16–18). In the case of high-risk customers, the FATF requires of banks and other financial institutions to apply extensive and stringent customer due diligence measures on all financial transactions.

Ongoing customer due diligence measures entail the regular monitoring of customer accounts and transactional activity to ensure that such transactions are consistent with customers' risk profile and source of funds (FATF, 2012/2023, p. 14). The FATF regards such measures as important in identifying transactions or activities that are potentially suspicious (FATF, 2014, p. 21). Banks and other financial institutions use ongoing customer due diligence measures to assess periodically the financial activities of high-risk customers to identify and prevent money laundering and terrorist financing activities.

Simplified, enhanced and ongoing customer due diligence measures are all subject to the risk-based approach. This essentially means that in assessing customers' financial activity, a distinction must be made between low-risk customers and high-risk customers and that the commensurate measures must be applied (FATF, 2012/2023, p. 31). The implication is that banks and other financial institutions should focus their resources on combating more riskier activities such as money laundering and terrorist financing. In this way, compliance and administrative costs for both customers and financial institutions are minimized.

In accordance with recommendation 11, financial institutions should be required, by law, to keep all information and transaction records obtained during customer due diligence investigations, account files and business correspondence, including the results of any analysis undertaken (e.g. inquiries to establish the background and purpose of complex, unusual and large transactions), for at least five years after the business relationship is ended, or after the date of the occasional transaction. Such information and records should further be available to domestic competent authorities upon appropriate authority and must be sufficient to enable reconstruction of individual transactions with a view to provide, if necessary, evidence for prosecution of criminal activity.

In the implementation of customer due diligence measures, banks and other financial institutions may suspect or have reasonable grounds to suspect that funds are the proceeds of a criminal activity or are related to terrorist financing. In such instances, recommendation 20 requires that the suspicious transaction or activity be reported promptly to the relevant FIU. A suspicion in this regard may be informed by the application of risk indicators, or red flags, which "may on their own seem insignificant but, taken together, may raise suspicion concerning that situation" (South African Financial Intelligence Centre, 2019, p. 15). Prominent risk indicator lists have been published by the FATF in several of its guidance notes. In addition to the suspicious activity reporting requirements, national laws are sometimes formulated in a way that require of banks to impose targeted financial sanctions not only in instances where a designated person or entity is identified, but also where the bank has knowledge of the commission of a terrorist financing, proliferation financing or money laundering offence (Lupton, 2023, pp. 48–58).

In performing customer due diligence investigations, moreover, banks and other financial institutions will do well to ensure that sufficient information on beneficial ownership and legal arrangements is gathered. Such information is necessary to assess the risk of the misuse of legal persons and legal arrangements and to apply measures to prevent such misuse. In this regard, recommendation 24 provides that countries should "ensure that there is adequate, accurate and up-to-date information on the beneficial ownership and

control of legal persons that can be obtained or accessed rapidly and efficiently by competent authorities, through either a register of beneficial ownership or an alternative mechanism" (FATF, 2012/2023, p. 22). Recommendation 25 similarly provides that countries should "ensure that there is adequate, accurate and up-to-date information on express trusts and other similar legal arrangements including information on the settlor(s), trustee(s) and beneficiary(ies), that can be obtained or accessed efficiently and in a timely manner by competent authorities" (FATF, 2012/2023, p. 22).

4.6 International cooperation

The FATF recommendations provide, in the final instance, for various forms of international cooperation. This includes cooperation through the adoption of certain stipulated international legal instruments, the taking of steps to enable and consequently provide mutual legal assistance, readily executing extradition requests relating to money laundering and terrorist financing, and the timely conclusion of bilateral and multilateral agreements between competent authorities from different countries (FATF, 2012/2023, pp. 27–30). The FATF therefore clearly holds the view that international cooperation is essential in the fight against money laundering, terrorist financing and proliferation financing.

5. Implementation of money laundering controls by banks in the illegal wildlife trade context

Banks represent important institutions through which funds generated from IWT can be laundered. The nexus between the IWT role player and the bank is generally facilitated by a bank–customer relationship. Anti-money laundering laws invariably place an obligation on banks to implement money laundering controls in relation to both prospective and existing clients.

In the case of a prospective client, whether an individual or entity, the bank must satisfy itself as to the identity of the prospective client. In accordance with standard banking practice, the bank must request from the prospective client a valid form of identification, such as a passport, driver's license, identification card or, in the case of an entity, company registration records, beneficial ownership information, information relating to the control structure of the client and any other relevant information. Prospective clients are also required to provide documentary proof of their current residential or business address and information on the source of funds that the client expects to use in the course of the business relationship.

Upon receipt, this information and documentation must be verified in accordance with the compliance policies of the bank. The aim of verification requirements in this regard is to confirm the client's identity particulars. The implication therefore is that banks may not simply rely on scanned or e-mailed documentation to satisfy verification requirements, but must take further steps in this regard. Client data may, for instance, be corroborated with reference to google searches, data maintained by national authorities or international standard-setting bodies such as the FATF, public court documents and professional oversight bodies such as law societies (ACAMS, 2019, p. 209). Banks must, however, ensure that the information obtained is reliable. Applied to the IWT context, the identification and verification processes mean that IWT role players will need to provide the bank with convincing and verifiable information regarding a legitimate source of income. This may be relatively easy to satisfy for high-level role players who typically have both lawful and unlawful sources of income. For low-level role players who are normally uneducated, unemployed and from poor backgrounds, however, providing information on a legitimate source of income may prove to be difficult. Therefore, to justify the future incoming

payments from IWT operations, the low-income role player may provide the bank with a spurious reason relating to the source of income.

In addition to identification and verification processes, the bank must screen the client information against applicable sanctions lists. It may also determine whether there are adverse media reports in connection to the client. This is particularly relevant in the IWT context where wildlife traffickers and poachers are frequently publicized on law enforcement databases and other public platforms. On this information, the bank will conduct a risk assessment pertaining to a wide range of illicit activities, including IWT. This assessment will be informed by the application risk indicators. Ultimately, this assessment determines the level of risk posed by the client, thereby resulting in the formulation of the client profile.

From the client profile, therefore, it will be clear whether the client relationship will be carried out on a low- or high-risk basis, or whether the client relationship will not be established at all due to, for example, the client's status as a designated individual or entity for the purposes of the applicable sanctions lists. In the IWT context, specific industries or businesses commonly targeted for IWT abuse will pose a higher risk. High-risk businesses may include international trade companies, and especially import–export, freight forwarding and customs clearance type companies, operating in wildlife along high-risk corridors or ports associated with IWT supply and demand (FATF, 2020, p. 60). Moreover, the involvement of legal wildlife-related organizations such as private zoos, game farms, veterinarians and game lodges/reserves may also pose a higher risk given that such organizations are frequently involved in the facilitation of illegally harvested wildlife (SAMLIT, 2021, p. 32; FATF, 2020, p. 60). Newly established client relationships that are flagged as high risk will attract enhanced and ongoing due diligence measures. This will also apply in cases where an existing client intends to enter into a transaction or business relationship that the bank regards as high risk or where the transaction or business relationship is inconsistent with the client's profile.

In the performance of customer due diligence, the bank will continue to monitor the client's transactional activity with a view to reconcile the transactional activity with the client's profile. Transactional activity or behavior that is inconsistent with the client's profile may be regarded as suspicious. In the IWT context, the permutations of suspicious transactions and behavior patterns are many. The FATF has developed a comprehensive list of risk indicators that can be used by banks to assist in identifying potentially suspicious transactions and behavior that could be indicative of money laundering linked to IWT (FATF, 2020, pp. 60–62). The following risk indicators are worth repeating here:

- Involvement of legal wildlife-related entities such as private zoos, breeders, (exotic) pet stores, safari companies, pharmaceutical companies making medicines containing wildlife components and wildlife collectors or reserves.
- Individual or beneficial owner(s) of a corporate domiciled in a jurisdiction that is a prominent transit or demand country for illegal wildlife.
- Large cash deposits by government officials working in wildlife protection agencies, border control or customs and revenue officials.
- Large cash or other deposits, wire transfers, multiple cash deposits and withdrawals and/or unexplained wealth from government officials working in forestry agencies, wildlife management authorities, zoo and wildlife park employees or CITES management authorities.
- Shipments of legal wildlife with anomalous, incomplete or otherwise suspicious CITES certificates.

If the bank suspects or has reasonable grounds to suspect that funds are the proceeds of a criminal activity, and IWT in particular, it should report promptly its suspicions to the respective FIU, irrespective of the value of the transaction (FATF, 2012/2023, p. 87). The FIU will then consolidate and appraise the information collected to disseminate the financial intelligence to law-enforcement and investigative authorities. Although the filing of a suspicious transaction report is likely to trigger sanctions screening, it does not itself necessarily impose an obligation on the part of the bank to freeze or confiscate the funds or property of the client. It is, instead, the relevant FIU that may be legally authorized to freeze or seize and confiscate the funds or property. The implication is that the client may not be aware of, and therefore may not interfere with, the investigations carried out by law enforcement and investigative authorities until such time as the FIU decides to implement asset recovery measures. This is consistent with FATF recommendation 4, which requires the enablement of competent authorities to freeze or seize and confiscate certain stipulated funds and property (FATF, 2012/2023, p. 12).

6. Analysis and recommendations

From the above it is clear that money laundering controls are important in investigating financial flows relating to IWT. However, the extent to which these controls may be effective in preventing the use of proceeds connected to IWT and in identifying and disrupting broader trafficking networks is not clear. The following general observations and recommendations can be made in this regard.

Although IWT has recently been the subject of increasing discourse by international bodies and national authorities, there is still relatively little known about the financial flows and, more specifically, the money laundering practices pertaining to IWT. The literature in point is limited. This in part is ascribed to the fact that IWT is still not treated by many countries as a serious crime, especially those countries that are not regarded as source or transit destinations. From a compliance perspective, such an approach to IWT may imply a lack of desire to understand and combat IWT risks, which leads to insufficiency in the allocation of resources to mitigate such risks. It also implies that IWT may not be treated as a predicate offence for money laundering. As IWT risks are unique, they require special resources in their mitigation, including focused training, case studies and risk indicators specific to IWT. Where such resources are not made available, money laundering in cases of IWT may not be detected and consequently investigated.

With the force of the UN and FATF on this issue, however, there are signs that this is changing. In this respect, banking institutions have taken the lead in addressing IWT risks by investigating financial flows linked to IWT. The FATF reports the following: "Several financial institutions surveyed for this study reported that in recent years they have identified IWT as a potential risk, and have since begun to introduce suspicious patterns and activities commensurate with IWT into their internal screening controls and customer due diligence (CDD) measures to screen new or existing clients" (FATF, 2020, p. 49). Given the strong focus on compliance in the banking sector, it is not surprising that banks have been proactive in investigating financial flows relating to IWT and are, in the application of compliance systems and procedures (including money laundering controls), developing new strategies and tools that are commensurate to IWT risks. This kind of initiative taken by the banking sector is acknowledged and welcome.

Against this background, the following recommendations are made:

- Countries should demonstrate a recognition of the seriousness of IWT by establishing IWT offences and amending national laws to reflect IWT as a predicate offence for money laundering.

- Banks and other institutions should ensure that members of their staff are adequately trained on the risks relating to IWT. Training should occur as frequently as new knowledge on the trends, methods and techniques used to launder proceeds from IWT emerge.
- Banks and other institutions should allocate financial, human and procedural resources to compliance departments commensurate with IWT risks. This includes the implementation of IWT-specific risk indicators.

In implementing money laundering controls, it is important to be cognizant of the transnational nature of IWT. As discussed above, major illegal wildlife syndicates typically operate internationally. While in some regions, such as Southern Africa, it is common to find IWT operations spanning neighboring jurisdictions, complex criminal enterprises usually span continents. International IWT operations are difficult to detect and disrupt. Investigations relating to illicit financial flows are complicated by the cross-border movement of wildlife or derivatives thereof as well as the use of complex money laundering techniques involving large amounts of cash and front and shell companies. Dealing with IWT as a national issue may not accordingly enable the identification and disruption of international trafficking networks. Cooperation at the local, regional and especially international level is imperative in this regard.

In accordance with a private-to-private model of cooperation as endorsed by the FATF (FATF, 2020, p. 55), it is submitted that banks are particularly well positioned to enable cooperation between themselves in the investigation of IWT financial flows. By leveraging existing domestic, regional and international networks, banks may be able swiftly, easily and effectively to exchange financial intelligence, which can in turn be used to support the investigations of law enforcement agencies and assist in the freezing and confiscation of laundered funds or property connected to IWT. The record-keeping requirements of banks may enable such a model of cooperation by ensuring that banks do not prematurely discard of potentially useful information. To avoid issues concerning the confidentiality of information, moreover, the model of cooperation must provide for procedures for using, handling, storing, disseminating, protecting and accessing such information. Therefore, a bank-to-bank information-sharing platform should probably be regulated by legislation.

In contemplating such a model, countries are well advised to consider the bank-to-bank cooperation model recently adopted in Singapore, known as collaborative sharing of money laundering/terrorism financing information and cases (Monetary Authority of Singapore, 2023). In terms of this model, the Monetary Authority of Singapore will establish a centralized digital platform that will allow banks to request and share targeted information on individuals and companies confidentially to assist in investigating, identifying and preventing money laundering, terrorist financing and proliferation financing. The platform will initially be available to only six international banks and will focus on three key risks – shell companies that conceal true beneficial ownership, trade-based cross-border transactions that disguise criminal proceeds and shell companies that facilitate indirect trade and payments to sanctioned countries. Over time, the initiative will be expanded to include more banks and financial crime risks – potentially IWT risks as well. The recently implemented Fraud Reporting Exchange platform of the Australian Banking Association is also worth exploring in this regard, though it is seemingly restricted to fraud and "scam payments" (Finextra, 2023).

7. Conclusion

IWT is a transnational organized crime that generates billions in criminal proceeds each year. Its significant impact on the international financial system has prompted the FATF to publish a report on the relationship between IWT and money laundering. In this report, the FATF emphasizes the point that investigating the financial flows of cases suspected of money laundering relating to IWT is integral in preventing the use of proceeds generated from IWT and in identifying and disrupting broader trafficking operations. Such financial investigations are enabled by the implementation of the money laundering controls endorsed by the FATF. This article has argued, in the first place, that the effectiveness of these controls depends on the extent to which countries take IWT seriously. Taking IWT seriously should, at a minimum, entail amending national laws to reflect IWT as a criminal offence and a predicate offence for money laundering.

Second, this article has sought to illustrate the importance of the banking sector in combating money laundering relating to IWT. In this regard, the inherent characteristics of the banking sector render it suitable to tackling IWT as a transnational crime. By virtue of the strong international network of the banking sector, coupled with its strong emphasis on compliance, banks have a critical role to play in preventing the use of proceeds of IWT and in investigating broader trafficking operations. The international network of the banking sector further supports the view that the sector is well equipped to develop bank-to-bank platforms to facilitate the swift, easy and effective sharing of financial intelligence relating to IWT. Information sharing is vital in the investigation of money laundering and the eventual prosecution of IWT role players.

Finally, this article has noted the lack of research and data on the financial flows linked to IWT. It is hoped that the recent report of the FATF on IWT and money laundering will inspire strong(er) collaboration at the local, regional and international level in this regard. Such collaborations are necessary to contribute to the development of new knowledge on this important issue.

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Supplementary material

Supplementary data for this article can be found online.

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